NAMPA & MERIDIAN IRRIGATION DISTRICT *v.* BOND, PROJECT MANAGER, ET AL.

APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

No. 135. Argued March 6, 1925.—Decided April 13, 1925.

1. When an irrigation system has been completed under the Reclamation Act, subsequent construction of a drainage system to remove injurious consequences of its normal operation on the lands included is chargeable to maintenance and operation rather than to construction, and § 4 of the Reclamation Extension Act, preventing increase of construction charges when once fixed except by agreement between the Secretary of the Interior and a majority of water-right applicants and entrymen affected, does not apply. P. 53.
2. This is consistent with attributing to construction the cost of drainage provided for in the original plan because the need for it was existent or foreseen. P. 54.
3. Where lands of an Idaho irrigation district were included in a federal reclamation project under a contract obliging the Government to furnish water and construct drainage works within the district, which was done and the cost assessed as a construction

charge against all the project water users, the district agreeing that the project lands in the district should pay the same operation and maintenance charge per acre as announced by the Secretary of the Interior for similar lands of the project, *Held* that the project lands within the district were liable with the other project lands to bear, as an operation and maintenance charge, the cost of providing drainage for project lands outside the district which were being ruined by seepage water from the operation of the irrigation system. P. 53.

283 Fed. 569; 288 *id.* 541, affirmed.

APPEAL from a decree of the Circuit Court of Appeals affirming a decree of the District Court which dismissed a bill by which the Irrigation District sought to enjoin an official of the federal Reclamation Service and a water users' association from withholding water from lands within the District for nonpayment of maintenance and operation charges.

Messrs. H. E. McElroy and *Will R. King* for appellant. *Mr. Fremont Wood* was also on the brief.

Mr. W. W. Dyar, Special Assistant to the Attorney General, with whom the *Solicitor General* and *Assistant Attorney General Ira K. Wells* were on the brief, for Bond.

Mr. J. D. Eldridge for Payette-Boise Water Users' Association, Ltd.

MR. JUSTICE SUTHERLAND delivered the opinion of the Court.

Appellant is an irrigation district organized as a public corporation under the laws of Idaho. In 1915, its supply of water being insufficient to irrigate the lands of all its members, it entered into a contract with the United States, at that time engaged in the construction of the Boise irrigation project, for water to irrigate the unsupplied lands and for the construction of a drainage system

266 U. S. 85, but was for the purpose of overcoming injurious consequences arising from the normal and ordinary operation of the completed plant which, so far as appears, was itself well constructed. The fact that the need of drainage for the district lands, already existing or foreseen, had been supplied and the cost thereof charged to all the water users as a part of the original *construction*, by no means compels the conclusion that an expenditure of the same character, the necessity for which subsequently developed as an incident of operation, is not a proper *operating* charge. The same kind of work under one set of facts may be chargeable to construction and under a different set of facts may be chargeable to maintenance and operation. See *Schmidt* v. *Louisville C. & L. Ry. Co.*, 119 Ky. 287, 301–302. For example, headgates originally placed are charged properly to construction; but it does not follow that if an original headgate be swept away, its replacement, though requiring exactly the same kind of materials and work, may not be charged to operation and maintenance.

Appellant says the lands within the district are not benefited by the drainage in question; and, if a direct and immediate benefit be meant that is quite true. But it is not necessary that each expenditure for maintenance or operation considered by itself shall directly benefit every water user in order that he may be called upon to pay his proportionate part of the cost. If the expenditure of today does not especially benefit him, that of yesterday has done so or that of tomorrow will do so. The irrigation system is a unit, to be, and intended to be, operated and maintained by the use of a common fund to which all the lands under the system are required to contribute ratably without regard to benefits specifically and directly received from each detail to which the fund is from time to time devoted.

This conclusion, we think, fairly accords with the principle established by the supreme court of the state in

Colburn v. *Wilson*, 24 Ida. 94, 104; and we see no merit in the contention that under the state law a ratable part of the cost of this drainage cannot be assessed by the district upon the project lands within its limits because they are not benefited thereby. The cost of draining the district project lands was met by a charge imposed in part and proportionately upon the lands in the project outside the district. If now, when the latter need like protection, the district lands are called upon to assume an equivalent obligation, it requires no stretch of the realities to see, following from such an equitable adjustment, a benefit on the whole shared by both classes of lands alike. But in any event, since we find that the expenditure in question properly is chargeable to operation and maintenance, appellant is liable under the express terms of its contract.

Decree affirmed.